

MINUTES
of the
WATER AND NATURAL RESOURCES COMMITTEE

November 13-14, 2003
Room 307, State Capitol

PRESENT

Sen. Carlos R. Cisneros, Chair
Rep. Joe M Stell, Vice Chair
Sen. Sue Wilson Beffort
Sen. Joseph J. Carraro (11/14)
Rep. Joseph Cervantes
Sen. Dede Feldman
Rep. Larry A. Larranaga
Rep. James Roger Madalena (11/13)
Rep. Brian K. Moore
Sen. Mary Kay Papen
Sen. H. Diane Snyder
Rep. Don Tripp

Advisory Members

Rep. Anna M. Crook
Sen. Gay G. Kernan
Rep. Rhonda S. King (11/14)
Rep. Ben Lujan (11/13)
Rep. Danice Picraux
Sen. Nancy Rodriguez
Rep. Mimi Stewart (11/14)
Sen. Leonard Tsosie (11/14)
Rep. Eric A. Youngberg

ABSENT

Sen. Mary Jane M. Garcia
Rep. Dona G. Irwin
Rep. Andy Nunez
Sen. Shannon Robinson
Rep. Henry Kiki Saavedra
Rep. Robert White

Rep. Ray Begaye
Sen. Clinton D. Harden, Jr.
Sen. Timothy Z. Jennings
Sen. Steve Komadina
Sen. Leonard Lee Rawson

Dates of attendance are indicated for members who were not present for the entire meeting.

Staff

Gordon Meeks
Jon Boller
Liz Holmes
Larry Matlock

Senator Carlos R. Cisneros called the meeting to order at 10:20 a.m.

Thursday, November 13

STATE WATER PLAN

John D'Antonio, state engineer, and Estevan Lopez, director of the Interstate Stream Commission, presented a preliminary draft of the state water plan. They told the committee that the state plan will include some of the elements of the regional plans, six of which have been completed out of 16. Additionally, three more regional plans have been submitted with their reviews not yet completed. Approximately 29 meetings have been held around the state for public input on the state plan. One thousand five hundred people from 225 communities around the state participated in the meetings.

Mr. D'Antonio stressed that this is a work in progress, which will continue to be refined over time, and that even in its final form, the state plan will continue to be updated. He noted that implementation strategies were included in the plan even though they were not required and went on to describe the various elements of the draft plan and the need for accountability. He also outlined the primary project management plans.

Management plans will cover active resource management and the water adjudication process. According to Mr. D'Antonio, House Bill 744 provided funding that will allow increased attention to ongoing adjudications and improvements in the process. He said the office is still accepting public comments on the state plan and urged people to submit those comments by December 14 to ensure that they will be included.

Mr. Lopez addressed comments received by acequia associations, Indian nations, tribes and pueblos and others. He noted that the Water Trust Board is concerned about including in the plan any elements that might be considered legal water rights determinations.

The committee asked questions about and commented on:

- the difference between salt cedar management and watershed restoration;
- active water resource conservation, gray water use, watershed restoration, etc.;
- negotiations rather than litigation as a means to expedite the water rights adjudication process;
- water transfers and markets;
- how to treat public welfare as a foundation to protect water transfers;
- protection of senior rights;
- domestic wells use less than one percent of water in state and the justification for the focus on that in areas other than critical management areas;
- Native American membership on the Interstate Stream Commission;
- the role of water masters and their authority to fine or enforce water distribution agreements;
- protecting water quality;
- conservation policy;
- land use planning and water planning;
- schedule for completion of the plan; and
- hydrology staff levels at the Office of the State Engineer.

The chairman recognized several people in the audience to speak. Manuel Trujillo told

the committee that the acequia associations do not oppose the state plan but they want the Treaty of Guadalupe Hidalgo recognized in the plan. Moises Gonzales talked about land grants and water rights issues. He said that land grants seem to have been taken out of the equation as one of the interests that are included in the plan, whereas initially they had been included along with acequias. Phelps White, an interstate stream commissioner, told the committee that the commission is giving full support to the state water planning efforts and complimented the staff on their work on the plan.

Questions and comments (continued):

- estimated costs of the process (water projects in general would be \$2 to \$5 billion—no estimate for every program and policy mentioned in the plan);
- state engineer's authority for getting certain water and where it is used, such as the salt basin water—since otherwise Texas may be getting that water;
- needs for ground water compacts with Texas; and
- salt basin water.

WATER CONSERVATION STRATEGIES

Jean Witherspoon, water conservation coordinator for Albuquerque, representing the Water Conservation Alliance, explained that the organization deals primarily with urban issues rather than agricultural issues. The organization promotes conservation as a permanent practice rather than just a response to drought. She noted that although cities only use about 10 percent of the water in the state, they have borne the brunt of conservation efforts. She urged that there be more metering, reporting and monitoring of water use throughout the state by all users. Funding of many of the state engineer's educational efforts has come from private sources that may not always be available. She outlined several conservation methods that are particularly cost-effective and urged the state to adopt measures that would continue to save water over the long term, such as the use of efficient plumbing fixtures, xeriscaping, recycling water, updated building and plumbing codes, leak repair and pricing of water to discourage overconsumption.

Anne Watkins, special assistant to the state engineer, presented a report from the Drought Task Force's Drinking Water Work Group on its suggestions for a comprehensive statewide municipal and industrial water conservation program. The conservation suggestions include educational programs, technical assistance to communities, market-based incentives, metering, rate setting, local conservation planning, land use planning, community water resource collaboration and improved water conservation efficiency in public facilities.

The committee had questions and comments on:

- measuring the effectiveness of conservation;
- metering;
- land use;
- ensuring that there is water in the pipe before opening an area for development. Counties currently do not have to limit subdivisions in relationship to water availability (optional);
- the real cost of water included in water rates; most systems in the state do not necessarily cover cost of delivery; and

- water prices are inconsistent often with no relation to cost of delivery.

GILA RIVER WATER RIGHTS

Howard Hutchinson, representing the coalition of the Arizona and New Mexico counties, said the state needs to use 18,000 acre-feet of water to ensure that it does not lose the water forever. He said the state will need a lot of money to set up a system, along with money to pay the Central Arizona Project. There is no money in the federal bills dealing with Arizona and New Mexico water. He asked the committee to support a letter to Congress supporting New Mexico's water rights on the Gila River. The chair instructed staff to prepare a letter, with no opposition from the committee.

The committee asked who would own the water.

Estevan Lopez explained two areas of interest on the Gila. The first was the Virden Valley settlement, which allows 2,800 acres to be irrigated, and requires up to 240 acres to be taken out of production with the retirement of its water rights. He said the second area concerns the 18,000 acre-feet New Mexico is entitled to under the 1968 Colorado River Basin Project Act. He explained that the current legislation needs amending to ensure this, and outlined the various issues that are being negotiated so that this may happen. He is currently negotiating to incorporate a \$150 million appropriation into a bill to begin paying for estimated project costs of \$220 million.

FEDERAL FOREST LAND MANAGEMENT

Abel Camerina, U.S. Forest Service, testified that there are three threats to forests in New Mexico: invasive species (37,000 acres affected by invasive species), unmanaged off-highway vehicle use and general forest health. He emphasized the need for intergovernmental cooperation and coordination and that the forest service cannot do it alone.

The committee asked questions about and commented on:

- the bark beetle problem;
- cutting down and burning dead trees;
- off-road vehicle use and support for an age limit;
- Mescalero Apache thinning operations; and
- programmatic environmental impact statements.

WOOD PELLETS

Rob Davis, Forest Energy, Inc., and president of Pellet Fuels Institute, told the committee that his company produced about 1.3 million tons of pellet fuel last year. He said that biomass is extremely plentiful in the southwest and comes from many sources. Pellets are simply refined biomass, which is much easier to use than raw biomass. In Stockholm, much of the city is heated with hot water from 300-megawatt plants that burn pellets, some of which come from North America. He said that the state needs to envision heating with pellets instead of fossil fuels. The only difference will be that New Mexico can be self-sufficient in providing energy needs. There is no need for a subsidy for this industry. Pellets are half the price of propane and equal to the cost of natural gas delivered to the customer's door. In the long term, he said, pellets can replace other sources of energy. Pellets are far cleaner than most sources of energy. It is a carbon-

neutral fuel, meaning that biomass would otherwise be burned inefficiently or decompose.

He said he was not asking for a bill but urged the state to encourage pellet use in some way, such as converting schools to use pellet heat. This would pay for itself in three to 10 years.

Friday, November 14

PROPOSED LEGISLATION

The committee discussed and endorsed the following measures for introduction in the next regular session:

1. gray water rules by the Environmental Improvement Board;
2. water utility operators' certification standards and training;
3. water harvesting on commercial buildings;
4. water-conserving plumbing devices under building code;
5. general obligation bonding for water projects;
6. domestic well permit fee increase;
7. well drillers' licensing and abandoned well closure;
8. water adjudication process appropriation;
9. produced water tax credit for electric power plants;
10. power plant water conservation;
11. water conservation tax credit for irrigators;
12. Sandia National Laboratories tax credit for desalination research;
13. Sandia model online access, appropriation to state engineer;
14. state climatologist appropriation;
15. NMSU College of Agriculture water quality research, appropriation;
16. state viticulturist appropriation;
17. pink bollworm control, appropriation;
18. salt cedar treatments, appropriation;
19. EPsCOR and hydrologic studies appropriation;
20. aquifer mapping appropriation;
21. bosque restoration coordination by state forester, appropriation;
22. state forest management based on Mescalero model, memorial; and
23. stock pond exemption clarification for livestock only.

SALT CEDAR REMOVAL AND REVEGETATION PROGRAMS

This segment of the committee meeting consisted of an extensive and diverse discussion about the costs, benefits, consequences and management of salt cedar control efforts. The principal speakers were:

Debbie Hughes, director of the New Mexico Association of Soil and Water Conservation Districts;

Steve Harris, a member of the Alliance for the Rio Grande;

Mike Caragan, sales representative of BASF, the manufacturer of the herbicide, Arsenal;

Gary Lynch, a farmer/rancher from the Roswell area; and

Carl Madison, a farmer/rancher also from the Pecos River Valley.

The major focus of the discussion was on the efficacy of the use of Arsenal. Ms. Hughes testified that herbicide use is the most efficient and effective strategy for elimination of salt cedar; Mr. Harris and the ranchers charged that herbicides are responsible for the death of grass in pastures owned by the ranchers and that the ranchers have not been adequately restituted for the damage. Ms. Hughes and Mr. Caragan said that the herbicide has been proven to be safe and that its effects do not persist for more than one season; the cause of the grass not growing this year is a drought. Mr. Madison and Mr. Lynch maintained that their hay fields are subsurface-irrigated; the lack of water is the culprit for their loss of pasturage.

The rest of the discussion was a series of elaborations on the basic charges and countercharges.

Committee members debated the funding request for more salt cedar removal and agreed to endorse the requested appropriations with two conditions, that half of the money be spent on revegetation of native plants following salt cedar removal efforts and that a cost benefit analysis be completed to demonstrate the effectiveness of the program.

BOSQUE MANAGEMENT

Gina Dello Russo, Bosque del Apache National Wildlife Refuge, told the committee that planning, implementation and monitoring are the three basic steps to resource management. Adaptive management has been added to these. For bosque management, planning is critical because of the current condition of riparian habitats. Implementation and monitoring will provide the opportunity to improve techniques. She reminded the committee that there are a number of organizations working toward various goals on the Rio Grande with different levels and sources of funding, different techniques applied and different sustainability of their projects. She gave examples of the various efforts, complimenting their commitment to the health of the river, but added that the long-term success of all of them will be greatly improved by coordination and collaboration.

Committee questions and comments included:

- restoration of the bosque is the key;
- what coordination means;
- the history of the Bosque del Apache Habitat Improvement Program; and
- the most cost-efficient salt cedar removal techniques used on the wildlife refuge.

The committee approved the minutes from the previous meeting.

WATER TRUST BOARD ISSUES

Paula Garcia and Eileen Grevey Hillson, Water Trust Board members, read a statement from Trudy Valerio Healy, chairwoman of the board, and told the committee that the board is in the midst of selecting proposals to recommend to the legislature during the upcoming session. The funding gap between what has been proposed and what funds will be available is tremendous. They testified that 124 letters of interest requesting a total of \$535 million have been received by the board. Full proposals from 26 applicants were invited. The sum of their funding requests totals \$313 million. The board has been advised to expect \$13.2 million to be available as a result of the severance tax bonding measure that the legislature enacted earlier this

year. Therefore, there is a gap of \$300 million. The majority of these projects are justified to ensure that New Mexicans have safe, reliable sources of water needed to sustain themselves and future generations, as well as to protect the state's environment. There is not enough money to fund all projects, and the board has been told that alternative state funds to which it might have turned in the past are now all but depleted.

Ms. Garcia and Ms. Hillson said that the Water Project Finance Act, which created the Water Trust Board and Water Project Fund, was co-sponsored by Vice Chair Stell and is a true legacy piece of legislation, establishing a viable mechanism for financing the state's water needs now and into the future. However, meeting the needs is going to require additional recurring sources of revenue. Although there are many competing needs for state dollars, New Mexico is uniquely positioned in Congress to acquire needed federal funding if it can commit the necessary state match. They urged the committee to consider traditional state funding options, as well as any other promising new potential revenue sources when drafting legislation for the upcoming session.

The committee asked questions and commented on:

- criteria for prioritizing projects;
- options for financing the Water Trust Fund;
- lists of specific projects proposed for funding by the Water Trust Board;
- why legislation to fund the Water Trust Fund and the Project Fund has failed;
- emergency needs;
- trade-offs among financing formulas;
- water user fees;
- the role of the New Mexico Finance Authority;
- two-thirds of the applications coming from Santa Fe County;
- redirecting part of the permanent fund to the Water Trust Fund; and
- streams of revenue.

The committee adjourned at 5:10 p.m.